



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2019-0184; FRL-10000-90-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology State Implementation Plan for Volatile Organic Compounds under the 2008 Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the District of Columbia's (the District) state implementation plan (SIP) submitted on August 29, 2018. The District's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The District will address RACT for nitrogen oxides (NO<sub>x</sub>) in a separate SIP submission. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0184. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Becoat, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2036. Mr. Becoat can also be reached via electronic mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision to address all the RACT requirements for VOCs set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2018 RACT Submission). The District’s RACT submittal for the 2008 ozone NAAQS includes: (1) certification that for certain major sources, previously adopted VOC RACT controls in the District’s SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the Control Techniques Guidelines (CTGs) already adopted into the District’s SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA. The District’s SIP submittal also includes an update to the 2002 Mobile Equipment Repair and Refinishing (MERR) rule to incorporate the Ozone Transport Commission’s (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations

(MVMERR) rule adopted by the District in 2016. EPA addressed the 2009 MVMERR rule in a separate rulemaking action as it is not related to the 2008 VOC RACT SIP revision and does not impact EPA's approval. The DOEE also submitted as an amendment to the SIP-approved 2002 MERR rule the updated 2009 MVMERR rule. As previously mentioned, the 2009 MVMERR rule was addressed in a separate rulemaking action.

## **I. Background**

### **A. General**

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO<sub>x</sub> in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO<sub>x</sub> emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO<sub>x</sub> emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.<sup>1</sup> Section 172 of the CAA sets forth general requirements for SIPs in nonattainment areas, including a requirement that SIPs must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. CAA section 172(c)(1). Part D, subpart 2 of the CAA sets forth additional provisions for ozone nonattainment areas. CAA sections 181 – 185B. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment

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<sup>1</sup> See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas." *see also* 44 FR 53761, 53762 (September 17, 1979).

areas to implement RACT controls on all major stationary sources of VOC and NO<sub>x</sub>, and on source categories covered by a CTG document issued by EPA, for sources located in the nonattainment area. EPA's CTGs include recommendations on RACT controls for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs), primarily for NO<sub>x</sub> source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as a recommendation for what is RACT. Section 183(b) and (c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.<sup>2</sup> The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) or more of VOCs shall be considered a major source and subject to the requirements which would be applicable to major stationary sources as if the area was classified as a moderate nonattainment area. Section 182(f) extends the SIP requirements for major sources of VOCs to major sources of NO<sub>x</sub>, as defined in sections 302 and 182(c), (d), and (e).

Under the 2008 8-hour ozone standard, EPA designated the District as a marginal nonattainment

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<sup>2</sup> Only a portion of the Commonwealth of Virginia is included in the OTR.

area. As part of the OTR, the District must, at a minimum, implement more stringent moderate area RACT requirements for: (1) all categories of VOC or NO<sub>x</sub> sources covered by a CTG; (2) all other major stationary sources of VOC or NO<sub>x</sub> located in the area. Section 182(b)(2). For the District's 2008 VOC RACT analysis, despite classification as a marginal nonattainment area, the OTR major source thresholds of 50 tpy for VOCs and 100 tpy for NO<sub>x</sub> apply. Sections 184(b)(2), 182(f)(1).

## **B. EPA Guidance and Requirements**

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). 80 FR 12264, codified at 40 CFR Part 51, subpart AA. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In the preamble of the proposed rule, EPA stated that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. 78 FR 34178, 34192 (June 6, 2013). Stated differently, states can meet the RACT requirements associated with the 2008 ozone NAAQS either through (1) a certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS; (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels; and/or (3) a negative declaration if there are no source categories subject to certain CTGs within the nonattainment area. A certification must be accompanied by appropriate supporting information such as

consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations is more likely to occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a currently available RACT control level.

## **II. Summary of SIP Revision and EPA Analysis**

On August 29, 2018, the DOEE submitted a SIP revision to address all the VOC RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS. Specifically, the District's 2018 RACT Submission included: (1) a certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the CTGs already adopted into the District's SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA.

More detailed information on the District's 2018 VOC RACT submission; as well as a detailed summary of EPA's review of the submission, can be found in the notice of proposed rulemaking (NPR) for this action published on July 11, 2019 (84 FR 33032), which is also available on line at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2019-0184.

After evaluating the SIP revision submittal, EPA concluded that the District's SIP revision satisfied the 2008 8-hour ozone NAAQS RACT requirements for VOC through (1) certification that previously adopted RACT controls in the District's SIP for major, non-CTG VOC sources

that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; (2) a listing identifying those CTGs which the District has already adopted into its SIP, and (3) a listing of the negative declarations submitted by the District for those source categories covered by CTGs that do not exist in the District. On July 11, 2019 (84 FR 33032), EPA published an NPR for the District's SIP revision. EPA received one comment, which is addressed in Section III below.

### **III. Response to Comments**

EPA received comments from one anonymous commenter during the comment period for the proposed rulemaking action.

**Comment #1:** The commenter stated: "Did EPA actually review the regulations listed in table 1 for the control techniques guidance requirements or is EPA just saying that because these regulations were previously certified EPA doesn't have to review these regulations anymore? EPA should review every regulations the district lists to make sure the district still enforces these rules and that the rules continue to meet the reasonably available control technology requirements listed in the ctg to this day as well as make sure the district's regulations are identical to the regulations approved into the state's plan. The district periodically reevaluates it's regulations and makes changes as required by their laws so EPA needs to be very careful with what the district says it's regulations are meeting."

**Response #1:** EPA does not agree with the commenter's concerns. As noted in the NPR published on July 11, 2019 (84 FR 33032), and the associated Technical Support Document included in the docket, EPA has reviewed the District's 2018 RACT submission, including all

associated regulations and tables, and concluded that the District has met the VOC RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA. Therefore, this revision will help the District attain and maintain the NAAQS for ozone. The District certified that the regulations, under Title 20 (Environment), District Municipal Regulations (DCMR) Subtitle A (Air Quality), Chapter 7 – Volatile Organic Compounds, which contains the VOC RACT controls previously approved by EPA into the SIP under the 1-hour and 1997 8-hour ozone NAAQS, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources and CTG covered sources of VOCs.

First, EPA did review the District's regulations cited in Table 1, to ensure that every CTG and ACT identified as having been adopted by the District is still codified in the District's regulations.

Second, Table 1 of the District's SIP submission lists the date when EPA approved each SIP submission requesting approval for an adopted CTG or ACT. EPA evaluated the District's adopted regulations to ensure they conformed to the CTGs or ACTs at the time that EPA approved a SIP revision adopting a CTG or ACT. Moreover, if the District has changed any of its RACT regulations following EPA's approval of those CTGs or ACTs as part of the SIP, the version of the District's regulations which were approved into the SIP by EPA are still enforceable by EPA and the public.

Finally, EPA did not review in this action the District's enforcement of its currently-adopted regulations. EPA has authority to enforce any requirement of an EPA-approved SIP, See CAA section 113, and therefore has concurrent enforcement authority over those regulations which are in the District's SIP. Furthermore, EPA is not aware of any failure of the District to ensure that



the RACT regulations are being implemented.

**Comment #2:** The commenter also stated: “Under Table 2 the district says there are no fixed roof tanks that store petroleum products but a simple look at Google Maps shows the Ronald Reagan National Airport has several fixed roof tanks for storage of petroleum products. Did EPA actually review this table and make sure there were no sources subject to these control techniques guidance documents or did EPA just rely on the district's thinly stretched staff to make sure they don't have sources subject to every guidance document? EPA must do it's own independent research and come to the same conclusion as the district.”

**Response # 2:** Regarding commenter’s concern about the fixed roof tanks at Ronald Reagan National Airport, EPA notes that the tanks and airport are located in Arlington, Virginia and therefore are not within the District’s jurisdiction. Also, EPA did review Tables 1 and 2 to determine if the District made negative declarations for any CTG or ACT sources that were likely to be within the District. Many of the CTGs in Table 1 and ACTs in Table 2 are aimed at controlling emissions from large manufacturing facilities, such as shipbuilding, refinery operations, manufacture of metal furniture, manufacture of rubber tires, etc. These kind of manufacturing facilities would be known to EPA and the District Department of Energy and Environment, notwithstanding any perceived shortage of staff. EPA CAA enforcement personnel inspect facilities in the District for compliance with all CAA requirements and are familiar with the types of air emission sources located in the District. In response to this comment, EPA Region 3 air enforcement personnel reviewed Tables 1 and 2 in the SIP submission and did not identify any sources covered by a negative declaration that actually exist in the District. In sum, EPA did not identify any sources subject to CTGs or ACTs in the District for which the District submitted a negative declaration, and the commenter did not identify any

such sources.

#### **IV. Final Action**

EPA is approving the District of Columbia's August 29, 2018 SIP revision that satisfies the VOC RACT requirements under the 2008 8-hour ozone NAAQS.

#### **V. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which approves the District’s 2008 8-hour ozone RACT SIP revision, may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: September 23, 2019.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart J—District of Columbia**

2. Amend § 52.470, in the table in paragraph (e) by adding an entry for “VOC RACT and Negative Declarations—VOC Source Categories under the 2008 8-Hour ozone NAAQS” at the end of the table to read as follows:

**§ 52.470 Identification of plan.**

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(e)\* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	*	
VOC RACT and Negative Declarations — VOC Source Categories under the 2008 8-Hour ozone NAAQS	District of Columbia	08/29/2018	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	
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[FR Doc. 2019-21861 Filed: 10/9/2019 8:45 am; Publication Date: 10/10/2019]